WORKING DOCUMENT

DELEGATED ACT FOR DIRECT PAYMENTS

Legal draft of the Articles related to the **payment for agricultural practises beneficial for the climate and the environment (equivalence – ecological focus area)**

DISCLAIMER

This working document has been prepared by DG AGRI staff in order to facilitate the discussion in the Expert group for direct payments. It has not yet been subject of an interservice consultation nor revised by the Legal Service

Recitals

- (1) Article 29(1b) of Regulation (EU) No [DPR] establishes the possibility to cover equivalent practices with national or regional certifications schemes. Article 29(6)(b) empowers the Commission to establish appropriate requirements applicable to such certification schemes including the level of assurance to be provided by these schemes.
- (2) In order to have an appropriate level of assurance as regards the obligations set by the Regulation (EU) No [DPR], criteria should be established as regards the designation of public or private certification authorities.
- (3) In order to respect the principle of no double funding, detailed rules for the calculation of the payments for some specific commitments referred to in Article 29(6)(c) of Regulation (EU) No [DPR] need to be provided for. As these commitments are equivalent practices that allow farmers taking up such commitments to fulfil one (or more) obligations in order to receive the "greening" payment referred to in Chapter 2 of Title III of Regulation (EU) No [DPR], the payments for these commitments, compared to the normal payment foreseen under Article 29(6) of Regulation (EU) No [RDR], shall be reduced by an amount that shall be calculated based on the level of the greening payment in the Member State or region.

(...)

- (16) Article 32(1ba) of Regulation (EU) No [DPR] allows Member States to fulfil maximum fifty per cent of the individual ecological focus area at regional level. In order to ensure that such regional implementation brings additional benefits from an environmental and landscape point of view, provisions should be introduced on the features that can be used to build up adjacent ecological focus areas. Provisions should also be established as regards the designation of areas with the aim of creating synergies in the implementation of Union policies.
- (17) The possibility for farmers to implement collectively half of their individual ecological focus area obligation is provided for in Article 32(1c) of Regulation (EU) No [DPR] subject to the decision by Member States. Similarly to the regional implementation, provisions should be introduced on the features that can be used to build up adjacent ecological focus areas to guarantee added value for the environment. Rules should be provided for on the criteria for the farmers to be located in close proximity with flexibility for Member States to take account of different administrative structures. For

the sake of legal clarity detailed rules should be laid down on the content of the written agreement to be concluded between participants with the aim of setting the rights and obligations of each.

(18) As regards the possibility for certain Member States to exempt farmers in heavily forested areas from the ecological focus area obligation, for the sake of clarity, detailed rules should be established on the data to be used for the calculation of the land surface area and the ratio of forest to agricultural land.

(...)

(20) For the purposes of monitoring the correct application of the rules laid down in Regulation (EU) No [DPR] and of evaluating the policy implementation, it is necessary to specify certain notification obligations, in particular as regards the information to be notified by Member States on their decisions made in accordance with Chapter 2 of Title III of Regulation (EU) No [DPR].

Article 1

Requirements applicable to the national or regional certification schemes

- 1. Member States deciding to implement equivalent practices referred to in Article 29(1b)(b) of Regulation [DPR] shall designate one or more public or private certification authorities certifying that the farmer fulfils on its holding the practices in accordance with the provisions set out under Article 29(1b) of Regulation (EU) No [DPR].
- 2. Public or private certification authorities shall fulfil the following conditions:
 - they shall have the expertise, equipment and infrastructure required to carry out the certification tasks;
 - they shall have a sufficient number of qualified and experienced staff;
 - they shall be impartial and free from any conflict of interest as regards the exercise of the certification tasks;
 - in addition, in case of private certification authorities, they shall be accredited in accordance with EN ISO/IEC 17021 (Requirements for bodies providing audit and certification of management systems) or EN ISO/IEC 17065 (Conformity assessment Requirements for bodies certifying products, processes and services) in the sector of agricultural production. Accreditation may only be performed by a national accreditation body in the Union in accordance with the provisions of Regulation (EC) No 765/2008.
- 3. The designation of the public or private certification authority shall be withdrawn where it fails to satisfy the conditions for its designation referred to in paragraph 2.

Article 2

Detailed rules for the calculation of the amount referred to in Article 29 paragraph 6 of Regulation (EU) [RDR]

1. For farmers deciding to observe the practices referred to in Article 29(6)(c) of Regulation (EU) No [DPR] as equivalent practices pursuant to Article 29(1b)(ba) of Regulation (EU)

No [DPR], Member States shall deduct from the amount of support per hectare calculated pursuant to Article 29(6) of Regulation (EU) [RDR] an amount corresponding to one third of the average greening payment per hectare in the Member State or region for each greening practice that the measure is equivalent with.

2. The average greening payment per hectare in the Member State or region shall be calculated based on the percentage referred to in Article 33(1) of Regulation (EU) No [DPR] of the average of the national ceilings for the years 2015 until and including 2019 set out in Annex II of Regulation (EU) No [DPR] for calendar year 2019 and the number of eligible hectares declared in accordance with Article 26 or Article 28c of Regulation (EU) No [DPR] in 2015.

Article 7 Further criteria for the types of Ecological Focus Area

(...)

Article 8

Rules for the establishment of the regional implementation of ecological focus areas

- 1. Member States opting for the implementation provided by Article 32(1ba) of Regulation (EU) No [DPR] shall define regions for the purpose of this Article. The regions to be defined shall consist of single and homogenous geographical areas with similar agricultural and environmental conditions. For this purpose, homogeneity shall refer to soil type, elevation, as well as to the presence of natural and semi-natural areas.
- 2. Within the defined regions, Member States shall designate the areas where up to half of the percentage points of the ecological focus area requirement shall be implemented.
- 3. Member States shall in the defined areas provide for specific obligations for the participating farmers or groups of farmers. These obligations shall ensure contiguous structures of adjacent ecological focus areas. The obligations for the participating farmers or groups of farmers shall include a requirement that each participating farmer shall have at least 50% of the area subject to the obligation in Article 32(1) of Regulation (EU) No [DPR] located on the land of their holdings within the region and in accordance with the fifth subparagraph of Article 32(1) of that Regulation.
- 4. The obligations for the participating farmers or groups of farmers shall ensure that the contiguous ecological focus areas referred to in paragraph 3 will be made up with one or more of the areas mentioned under points (a), (c), (d) and (k) of the fourth subparagraph of Article 32(1) Regulation (EU) No [DPR].
- 5. The designation of areas and the definition of obligations referred to in paragraph 2 and 3 shall take account, if applicable, of existing national or regional biodiversity and/or climate change mitigation and adaptation strategies or needs identified with a view to ensure the ecological coherence of the Natura 2000 network referred to in Article 10 of Directive 92/43/EEC.

- 6. Prior to establishing obligations for farmers, the Member State shall consult the concerned farmers or groups of farmers and other relevant stakeholders. Following such consultation, the Member State shall establish a finalised detailed plan for the regional implementation and shall inform the concerned farmers or groups of farmers of this plan, including the designation and the obligations for the participating farmers or groups of farmers and in particular the precise percentage that each individual farmer has to implement on his own holding. This information shall be transmitted at the latest by the 30st of June of the year preceding the year in which this implementation will apply or in case of the first year of application of this Regulation in due time to allow the farmer to make his application accordingly.
- 7. Without prejudice to payments to farmers referred to in Article 29(2) of Regulation (EC) No DPR, the Member State shall ensure that arrangements are laid down with regard to financial compensations between farmers and as regards the administrative penalties in case of non-compliance on the contiguous ecological focus areas.

Notification requirement:

Member States opting for this regional implementation shall, in accordance with Article 32(1e) of Regulation No [DPR], notify the Commission by 1 August of the year preceding the year in which this implementation will apply. This notification shall contain information on the definition of the regions, the designation of areas, the types of areas and on the projected additional area that will be newly established as ecological focus area, as well as any other information that provides a justification how this regional implementation underpins the implementation of Union policies on the environment, climate and biodiversity.

Article 9

Rules for the establishment of the collective implementation and the criteria to be met by holdings to be considered to be in close proximity

- 1. Member States that decide to allow a collective implementation as provided for in Article 32(1c) of Regulation (EU) No [DPR], shall define the criteria to be met by holdings considered to be in close proximity using any of the following:
 - a. Farmers whose holding are in the same municipality
 - b. Farmers whose holding are in a perimeter an area with a radius of a number of kilometres to be set by Member States with a maximum of 3015 kilometres
- 2. Member States that opt for designating the areas on which collective implementation is possible and that opt for defining the obligations for participating farmers or groups of farmers, shall take account of existing national or regional biodiversity and/or climate change mitigation and adaptation strategies or needs identified with a view to ensure the ecological coherence of the Natura 2000 network referred to in Article 10 of Directive 92/43/EEC.
- 3. The obligations for the participating farmers or groups of farmers to be established pursuant to paragraph 2 shall include the condition that the contiguous ecological focus areas will be made up with one or more of the areas mentioned under points (a),

- (c), (d) and (k) of the fourth subparagraph of Article 32(1) of Regulation (EU) No [DPR].
- 4. Farmers participating in the collective implementation shall conclude a written agreement in accordance with [IACS *legal ref*] that includes details on the internal arrangements of financial compensation and as regards the administrative penalties in case of non-compliance on the common ecological focus area.

Notification requirement:

The notification on collective implementation referred to in Article 32(1e) of Regulation (EC) No DPR shall include information on the designation of areas and the type of areas, if applicable.

Article 10 Methods for the determination of the ratio of forest to agricultural land

- 1. The percentage of forests compared to the total land surface area referred to in the first subparagraph of paragraph 32(1d) of Regulation (EU) No [DPR] is to be established based on the data available from Eurostat. Forest data shall refer to the definition as applied by the Food and Agricultural Organisation of the United Nations and shall exclude the area under other wooded land. The total land surface area shall exclude the area under inland water (rivers and lakes).
- 2. The ratio of forest to agricultural land referred to in paragraph 32(1d) of Regulation (EU) No [DPR] shall be calculated using data available from Eurostat. If there are no data available from Eurostat on the land under forest at the required scale to assess the forest ratio on an area level equivalent to the LAU2 level or on the level of a clearly delineated unit which covers a single clear contiguous geographical area having similar agricultural conditions, other data sources may be used.

Article 11 Notifications

- 1. In order to ensure correct application of the rules set out in Regulation (EU) No [DPR] and this Regulation, Member States shall notify the Commission of the following information:
 - a. by [1 August 2014]:
 - i. [if applicable], their decision to calculate the payment referred to in Article 29(2) of Regulation (EU) No [DPR] according to the third subparagraph of that paragraph;
 - ii. [if applicable], their decision to designate further sensitive permanent grassland areas referred to in the second subparagraph of Article 31(1) of Regulation (EU) No [DPR], and the total number of hectares of designated sensitive grasslands;

- iii. [if applicable], their decision to apply the payment referred to in Article 29(2) of Regulation (EU) No [DPR] at regional level as provided for in the second subparagraph of Article 33(2) of that Regulation.
- b. by [30 September] of the year concerned the decision to newly designate environmentally sensitive permanent grassland area as referred to in the second subparagraph of Article [x] [DA] and the total number of hectares of this newly designated area;
- c. by [30 September] of each year, for the claim year concerned:
 - i. the total number of farmers exempted from one or more greening practices and the number of hectares declared by such farmers. In addition, the number of farmers exempted from all practices because they comply with the requirements of Regulation (EC) No 834/2007, the number of farmers exempted from the crop diversification obligation, and the number of farmers exempted from the ecological focus area obligation, and the respective number of hectares declared by such farmers. These data shall not include the farmers participating in the small farmer scheme;
 - ii. the total number of farmers applying equivalent measures, distinguishing farmers applying equivalence pursuant to Article 29(1b)(a) or (b) and the respective number of hectares declared by such farmers;
 - iii. the total number of farmers subject to crop diversification, broken down by the number of farmers subject to a diversification with two crops and the number of farmers subject to a diversification with three crops and including the respective number of hectares of arable land declared by such farmers;
 - iv. the total number of farmers taken into account for the calculation of the ratio of areas of permanent grassland to total agricultural area and the total number of hectares covered by permanent grassland declared by such farmers;
 - v. the total number of farmers declaring environmentally sensitive permanent grassland and the total number of hectares covered by environmentally sensitive permanent grassland declared by such farmers;
 - vi. the total number of farmers subject to the ecological focus area obligation, the total number of arable hectares declared by such farmers and the total number of hectares declared as ecological focus area before application of the weighting factors, broken down by type of ecological focus area.
 - vii. the total number of farmers implementing the ecological focus area obligation at regional or collective level and the total number of arable hectares declared by such farmers.

- d. by [30 September] of each year, the reference ratio and the annual ratio of areas of permanent grassland to total agricultural area.
- 2. In their notification in accordance with Article 32(1e) of Regulation (EU) No [DPR], Member States opting for the regional implementation referred to in Article 32(1ba) of Regulation (EU) No [DPR] shall include information on the definition of the regions, the designation of areas, the selected areas referred to in Article 8(4), and information that provides a justification how this regional implementation underpins the implementation of Union policies on the environment, climate and biodiversity.
- 3. In their notification in accordance with Article 32(1e) of Regulation (EU) No [DPR], Member States deciding to allow the collective implementation referred to in Article 32(1c) of Regulation (EU) No [DPR] shall include information on the designation of areas and the selected areas referred to in Article 9(3), if applicable.
- 1.4. In their notification in accordance with Article 32(1e) of Regulation (EU) No [DPR], Member States fulfilling the condition referred to in Article 32(1d) of Regulation (EU) No [DPR] deciding to apply the exemption referred to in that same Article, shall notify the Commission of that decision by 1 August of the year preceding its first application as well as its further application as referred to in Article 10(3) of this Regulation. This notification shall include the details of this decision, including the data and the calculations that demonstrate that all the conditions for the exemption referred to in Article 32(1d) of Regulation (EU) No [DPR] are fulfilled.

CHAPTER VIII

AMENDMENTS

Article 19
Amendment of Regulation (EU) No [DPR]

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